

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

March 20, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-3412**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

**In the Interest of Don R.K.,  
a Person Under the Age of 18:**

**STATE OF WISCONSIN,**

**Petitioner-Respondent,**

**v.**

**DON R.K.,**

**Respondent-Appellant.**

APPEAL from an order of the circuit court for Winnebago County:

ROBERT A. HAWLEY, Judge. *Reversed and cause remanded with directions.*

BROWN, J. Don R. K. appeals from a waiver of juvenile court jurisdiction. Don contends that the trial court should have dismissed the State's waiver petition with prejudice for noncompliance with the procedures and time limits of § 48.25(2)(a), STATS. We hold that the trial court erred by not dismissing the petitions with prejudice after the State failed to obtain a good

cause extension of the time limits or to include with its amended petitions a statement of the reasons for the delay in filing. We reverse the trial court's order waiving jurisdiction and remand with directions to enter orders of dismissal.

Don was arrested on June 7, 1995, because of his suspected involvement in three burglaries and was placed in secure detention after the requisite hearing. *See* § 48.21(1)(a), STATS. On June 9, the intake worker issued referrals recommending that the State file delinquency petitions. *See* § 48.24(5), STATS. Five days later, the State timely filed the delinquency petition and a petition for waiver of juvenile court jurisdiction. *See* § 48.25(2)(a), STATS.

At the scheduled waiver hearing on July 5, the State informed the trial court that it was unable to proceed because the social worker from the Waushara County Department of Social Services who was to testify to Don's juvenile record had become ill. At the State's request, the trial court granted a temporary adjournment. When the parties reappeared two days later, the State was still unable to get a witness from Waushara county because the other social workers were out for the Fourth of July holiday. So the State volunteered to dismiss the case without prejudice. Don did not object, but stated that he was not waiving any time limits. The trial court granted the State's motion and Don was released.

On July 13, six days after the case was dismissed, the intake worker refiled his referrals, again recommending that the State file petitions. The intake worker acted on his own initiative, without a referral from the State

requesting further investigation. Twenty days later, on August 2, the State refiled its petitions and the trial court subsequently waived its juvenile court jurisdiction over Don.

On appeal, Don claims that the State failed to comply with the procedures and time limits of § 48.25(2)(a), STATS.,<sup>1</sup> when it filed the second petitions. We are thus presented with a question of statutory interpretation, a question of law which we review de novo. See *Green County Dep't of Human Servs. v. H.N.*, 162 Wis.2d 635, 645, 469 N.W.2d 845, 848 (1991).

Don relies on *C.A.K. v. State*, 154 Wis.2d. 612, 453 N.W.2d 897 (1990), and argues that the procedures set forth in § 48.25(2)(a), STATS., are mandatory and that the State surrendered its right to proceed against him when it tried to refile its petitions after volunteering to dismiss the original case. See

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<sup>1</sup> In pertinent part, § 48.25(2)(a), STATS., provides:

[T]he district attorney ... shall file the petition, close the case, or refer the case back to intake within 20 days after the date that the intake worker's recommendation was filed ... The time limits in this subsection may only be extended by a judge upon a showing of good cause under s. 48.315. If a petition is not filed within the time limitations set forth in this subsection and the court has not granted an extension, the petition shall be accompanied by a statement of reasons for the delay. The court shall dismiss with prejudice a petition which was not timely filed unless the court finds at the plea hearing that good cause has been shown for failure to meet the time limitations.

*C.K.*, 154 Wis.2d at 614, 453 N.W.2d at 897-98. After receiving the intake worker's recommendations, the district attorney has twenty days to decide how it will proceed. Under § 48.25(2)(a), when the State fails to meet this twenty-day limit, its petitions must be dismissed. See *C.A.K.*, 154 Wis.2d at 623, 453 N.W.2d at 901.

There are three ways that the law allows an extension of the twenty-day time limit. Those three avenues are: one, to refer the case back to the juvenile intake worker for further investigation within the twenty days; two, to seek a court extension of the time limit upon a showing of good cause; or three, to allow the twenty-day time limit to run and file an untimely delinquency petition together with a statement of the reasons for the delay and later obtain court approval for the delay upon a showing of good cause. *Id.* at 619, 453 N.W.2d at 899-900. Don submits that the State failed to follow any one of these options and, therefore, the trial court should have dismissed the petition with prejudice.<sup>2</sup>

The State argues that its voluntary dismissal of the case implicitly voided intake's original referral recommendations. Since intake's second set of recommendations were filed within forty days of its original receipt of information, and the State refiled petitions within twenty days of these second

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<sup>2</sup> While ch. 48, STATS., has recently undergone extensive revision, the sections establishing these procedures have remained unchanged. Compare § 48.25(2)(a), STATS., 1993-94 with 1995 Wis. Act 27, §§ 2423-2635m.

referrals, the State argues that it has met the procedural mandates within §§ 48.24(5) and 48.25(2)(a), STATS. In essence, the State claims that when it asked for a voluntary dismissal, it was entitled to a complete do over. But if we accepted this position, the State could use a voluntary dismissal to circumvent the legislature's intent "to define and limit the authority of the district attorney to initiate proceedings against a juvenile beyond the twenty-day time limitation set forth in [§ 48.25(2)(a), STATS]." See *C.A.K.*, 154 Wis.2d at 623, 453 N.W.2d at 901-02.

Of course, as we explained above, the State could have avoided dismissal by either requesting a good cause extension of the time limits at the July 7 hearing (instead of requesting a dismissal without prejudice) or by including a statement of the reasons for its delay when it refiled the petition in August.

*By the Court.*—Order reversed and cause remanded with directions.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.